

tion of the Act as the subject matter of advisory opinions, and inserted requirement that rules or regulations forming the basis for rules of law be rules or regulations proposed pursuant to section 438(c) of this title and that advisory opinions be issued only in accordance with the provisions of this section.

Subsec. (b). Pub. L. 94-283, §108(a), designated existing provisions as par. (1), substituted provisions that any person who relies upon any finding or provision of an advisory opinion in accordance with the provisions of paragraph (2) and who acts in good faith in accordance with the provisions and findings of the advisory opinion shall not, as a result of that act, be subject to any sanctions provided by the Act or by chapter 95 or 96 of title 26 for provisions that any person with respect to whom an advisory opinion was rendered under subsection (a) who acted in good faith in accordance with the provisions and findings of an advisory opinion would be presumed to be in compliance with the Act, and added par. (2).

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-187 effective Jan. 8, 1980, see section 301(a) of Pub. L. 96-187, set out as a note under section 431 of this title.

#### EFFECTIVE DATE

Section effective Jan. 1, 1975, see section 410(a) of Pub. L. 93-443, set out as an Effective Date of 1974 Amendment note under section 431 of this title.

#### CONFORMANCE OF ADVISORY OPINIONS ISSUED PRIOR TO MAY 11, 1976, TO REQUIREMENTS IMPOSED UNDER 1976 AMENDMENTS

Section 108(b) of Pub. L. 94-283 provided that: "The Commission shall, no later than 90 days after the date of the enactment of this Act [May 11, 1976], conform the advisory opinions issued before such date of enactment to the requirements established by section 312 (a) of the Act [subsec. (a) of this section], as amended by subsection (a) of this section. The provisions of section 312(b) of the Act [subsec. (b) of this section], as amended by subsection (a) of this section, shall apply with respect to all advisory opinions issued before the date of the enactment of this Act as conformed to meet the requirements of section 312(a) of the Act, as amended by subsection (a) of this section."

### § 437g. Enforcement

#### (a) Administrative and judicial practice and procedure

(1) Any person who believes a violation of this Act or of chapter 95 or chapter 96 of title 26 has occurred, may file a complaint with the Commission. Such complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury and subject to the provisions of section 1001 of title 18. Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation. Before the Commission conducts any vote on the complaint, other than a vote to dismiss, any person so notified shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the complaint. The Commission may not conduct any investigation or take any other action under this section solely on the basis of a complaint of a person whose identity is not disclosed to the Commission.

(2) If the Commission, upon receiving a complaint under paragraph (1) or on the basis of in-

formation ascertained in the normal course of carrying out its supervisory responsibilities, determines, by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, or is about to commit, a violation of this Act or chapter 95 or chapter 96 of title 26, the Commission shall, through its chairman or vice chairman, notify the person of the alleged violation. Such notification shall set forth the factual basis for such alleged violation. The Commission shall make an investigation of such alleged violation, which may include a field investigation or audit, in accordance with the provisions of this section.

(3) The general counsel of the Commission shall notify the respondent of any recommendation to the Commission by the general counsel to proceed to a vote on probable cause pursuant to paragraph (4)(A)(i). With such notification, the general counsel shall include a brief stating the position of the general counsel on the legal and factual issues of the case. Within 15 days of receipt of such brief, respondent may submit a brief stating the position of such respondent on the legal and factual issues of the case, and replying to the brief of general counsel. Such briefs shall be filed with the Secretary of the Commission and shall be considered by the Commission before proceeding under paragraph (4).

(4)(A)(i) Except as provided in clauses<sup>1</sup> (ii) and subparagraph (C), if the Commission determines, by an affirmative vote of 4 of its members, that there is probable cause to believe that any person has committed, or is about to commit, a violation of this Act or of chapter 95 or chapter 96 of title 26, the Commission shall attempt, for a period of at least 30 days, to correct or prevent such violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with any person involved. Such attempt by the Commission to correct or prevent such violation may continue for a period of not more than 90 days. The Commission may not enter into a conciliation agreement under this clause except pursuant to an affirmative vote of 4 of its members. A conciliation agreement, unless violated, is a complete bar to any further action by the Commission, including the bringing of a civil proceeding under paragraph (6)(A).

(ii) If any determination of the Commission under clause (i) occurs during the 45-day period immediately preceding any election, then the Commission shall attempt, for a period of at least 15 days, to correct or prevent the violation involved by the methods specified in clause (i).

(B)(i) No action by the Commission or any person, and no information derived, in connection with any conciliation attempt by the Commission under subparagraph (A) may be made public by the Commission without the written consent of the respondent and the Commission.

(ii) If a conciliation agreement is agreed upon by the Commission and the respondent, the Commission shall make public any conciliation agreement signed by both the Commission and the respondent. If the Commission makes a determination that a person has not violated this Act or chapter 95 or chapter 96 of title 26, the

<sup>1</sup> So in original. Probably should be "clause".

Commission shall make public such determination.

(C)(i) Notwithstanding subparagraph (A), in the case of a violation of any requirement of section 434(a) of this title, the Commission may—

(I) find that a person committed such a violation on the basis of information obtained pursuant to the procedures described in paragraphs (1) and (2); and

(II) based on such finding, require the person to pay a civil money penalty in an amount determined under a schedule of penalties which is established and published by the Commission and which takes into account the amount of the violation involved, the existence of previous violations by the person, and such other factors as the Commission considers appropriate.

(ii) The Commission may not make any determination adverse to a person under clause (i) until the person has been given written notice and an opportunity to be heard before the Commission.

(iii) Any person against whom an adverse determination is made under this subparagraph may obtain a review of such determination in the district court of the United States for the district in which the person resides, or transacts business, by filing in such court (prior to the expiration of the 30-day period which begins on the date the person receives notification of the determination) a written petition requesting that the determination be modified or set aside.

(iv) This subparagraph shall apply with respect to violations that relate to reporting periods that begin on or after January 1, 2000, and that end on or before December 31, 2013.

(5)(A) If the Commission believes that a violation of this Act or of chapter 95 or chapter 96 of title 26 has been committed, a conciliation agreement entered into by the Commission under paragraph (4)(A) may include a requirement that the person involved in such conciliation agreement shall pay a civil penalty which does not exceed the greater of \$5,000 or an amount equal to any contribution or expenditure involved in such violation.

(B) If the Commission believes that a knowing and willful violation of this Act or of chapter 95 or chapter 96 of title 26 has been committed, a conciliation agreement entered into by the Commission under paragraph (4)(A) may require that the person involved in such conciliation agreement shall pay a civil penalty which does not exceed the greater of \$10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation (or, in the case of a violation of section 441f of this title, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of \$50,000 or 1,000 percent of the amount involved in the violation).

(C) If the Commission by an affirmative vote of 4 of its members, determines that there is probable cause to believe that a knowing and willful violation of this Act which is subject to subsection (d) of this section, or a knowing and willful violation of chapter 95 or chapter 96 of title 26, has occurred or is about to occur, it may refer such apparent violation to the Attor-

ney General of the United States without regard to any limitations set forth in paragraph (4)(A).

(D) In any case in which a person has entered into a conciliation agreement with the Commission under paragraph (4)(A), the Commission may institute a civil action for relief under paragraph (6)(A) if it believes that the person has violated any provision of such conciliation agreement. For the Commission to obtain relief in any civil action, the Commission need only establish that the person has violated, in whole or in part, any requirement of such conciliation agreement.

(6)(A) If the Commission is unable to correct or prevent any violation of this Act or of chapter 95 or chapter 96 of title 26, by the methods specified in paragraph (4), the Commission may, upon an affirmative vote of 4 of its members, institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order (including an order for a civil penalty which does not exceed the greater of \$5,000 or an amount equal to any contribution or expenditure involved in such violation) in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business.

(B) In any civil action instituted by the Commission under subparagraph (A), the court may grant a permanent or temporary injunction, restraining order, or other order, including a civil penalty which does not exceed the greater of \$5,000 or an amount equal to any contribution or expenditure involved in such violation, upon a proper showing that the person involved has committed, or is about to commit (if the relief sought is a permanent or temporary injunction or a restraining order), a violation of this Act or chapter 95 or chapter 96 of title 26.

(C) In any civil action for relief instituted by the Commission under subparagraph (A), if the court determines that the Commission has established that the person involved in such civil action has committed a knowing and willful violation of this Act or of chapter 95 or chapter 96 of title 26, the court may impose a civil penalty which does not exceed the greater of \$10,000 or an amount equal to 200 percent of any contribution or expenditure involved in such violation (or, in the case of a violation of section 441f of this title, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of \$50,000 or 1,000 percent of the amount involved in the violation).

(7) In any action brought under paragraph (5) or (6), subpoenas for witnesses who are required to attend a United States district court may run into any other district.

(8)(A) Any party aggrieved by an order of the Commission dismissing a complaint filed by such party under paragraph (1), or by a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed, may file a petition with the United States District Court for the District of Columbia.

(B) Any petition under subparagraph (A) shall be filed, in the case of a dismissal of a complaint by the Commission, within 60 days after the date of the dismissal.

(C) In any proceeding under this paragraph the court may declare that the dismissal of the complaint or the failure to act is contrary to law, and may direct the Commission to conform with such declaration within 30 days, failing which the complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint.

(9) Any judgment of a district court under this subsection may be appealed to the court of appeals, and the judgment of the court of appeals affirming or setting aside, in whole or in part, any such order of the district court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(10) Repealed. Pub. L. 98-620, title IV, § 402(1)(A), Nov. 8, 1984, 98 Stat. 3357.

(11) If the Commission determines after an investigation that any person has violated an order of the court entered in a proceeding brought under paragraph (6), it may petition the court for an order to hold such person in civil contempt, but if it believes the violation to be knowing and willful it may petition the court for an order to hold such person in criminal contempt.

(12)(A) Any notification or investigation made under this section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.

(B) Any member or employee of the Commission, or any other person, who violates the provisions of subparagraph (A) shall be fined not more than \$2,000. Any such member, employee, or other person who knowingly and willfully violates the provisions of subparagraph (A) shall be fined not more than \$5,000.

**(b) Notice to persons not filing required reports prior to institution of enforcement action; publication of identity of persons and unfiled reports**

Before taking any action under subsection (a) of this section against any person who has failed to file a report required under section 434(a)(2)(A)(iii) of this title for the calendar quarter immediately preceding the election involved, or in accordance with section 434(a)(2)(A)(i) of this title, the Commission shall notify the person of such failure to file the required reports. If a satisfactory response is not received within 4 business days after the date of notification, the Commission shall, pursuant to section 438(a)(7) of this title, publish before the election the name of the person and the report or reports such person has failed to file.

**(c) Reports by Attorney General of apparent violations**

Whenever the Commission refers an apparent violation to the Attorney General, the Attorney General shall report to the Commission any action taken by the Attorney General regarding the apparent violation. Each report shall be transmitted within 60 days after the date the Commission refers an apparent violation, and every 30 days thereafter until the final disposition of the apparent violation.

**(d) Penalties; defenses; mitigation of offenses**

(1)(A) Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution, donation, or expenditure—

(i) aggregating \$25,000 or more during a calendar year shall be fined under title 18, or imprisoned for not more than 5 years, or both; or

(ii) aggregating \$2,000 or more (but less than \$25,000) during a calendar year shall be fined under such title, or imprisoned for not more than 1 year, or both.

(B) In the case of a knowing and willful violation of section 441b(b)(3) of this title, the penalties set forth in this subsection shall apply to a violation involving an amount aggregating \$250 or more during a calendar year. Such violation of section 441b(b)(3) of this title may incorporate a violation of section 441c(b), 441f, or 441g of this title.

(C) In the case of a knowing and willful violation of section 441h of this title, the penalties set forth in this subsection shall apply without regard to whether the making, receiving, or reporting of a contribution or expenditure of \$1,000 or more is involved.

(D) Any person who knowingly and willfully commits a violation of section 441f of this title involving an amount aggregating more than \$10,000 during a calendar year shall be—

(i) imprisoned for not more than 2 years if the amount is less than \$25,000 (and subject to imprisonment under subparagraph (A) if the amount is \$25,000 or more);

(ii) fined not less than 300 percent of the amount involved in the violation and not more than the greater of—

(I) \$50,000; or

(II) 1,000 percent of the amount involved in the violation; or

(iii) both imprisoned under clause (i) and fined under clause (ii).

(2) In any criminal action brought for a violation of any provision of this Act or of chapter 95 or chapter 96 of title 26, any defendant may evidence their lack of knowledge or intent to commit the alleged violation by introducing as evidence a conciliation agreement entered into between the defendant and the Commission under subsection (a)(4)(A) of this section which specifically deals with the act or failure to act constituting such violation and which is still in effect.

(3) In any criminal action brought for a violation of any provision of this Act or of chapter 95 or chapter 96 of title 26, the court before which such action is brought shall take into account, in weighing the seriousness of the violation and in considering the appropriateness of the penalty to be imposed if the defendant is found guilty, whether—

(A) the specific act or failure to act which constitutes the violation for which the action was brought is the subject of a conciliation agreement entered into between the defendant and the Commission under subparagraph (a)(4)(A);

(B) the conciliation agreement is in effect; and

(C) the defendant is, with respect to the violation involved, in compliance with the conciliation agreement.

(Pub. L. 92-225, title III, § 309, formerly § 314, as added Pub. L. 93-443, title II, § 208(a), Oct. 15, 1974, 88 Stat. 1284; renumbered § 313 and amended Pub. L. 94-283, title I, §§ 105, 109, May 11, 1976, 90 Stat. 481, 483; renumbered § 309 and amended Pub. L. 96-187, title I, §§ 105(4), 108, Jan. 8, 1980, 93 Stat. 1354, 1358; Pub. L. 98-620, title IV, § 402(1)(A), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 106-58, title VI, § 640(a), (b), Sept. 29, 1999, 113 Stat. 476, 477; Pub. L. 107-155, title III, §§ 312(a), 315(a), (b), Mar. 27, 2002, 116 Stat. 106, 108; Pub. L. 110-433, § 1(a), Oct. 16, 2008, 122 Stat. 4971.)

#### REFERENCES IN TEXT

This Act, referred to in subsecs. (a) and (d), means the Federal Election Campaign Act of 1971, as amended, as defined by section 431 of this title.

#### PRIOR PROVISIONS

Provisions similar to those comprising subsec. (a) of this section were contained in section 308(d) of Pub. L. 92-225, title III, Feb. 7, 1972, 86 Stat. 18 (section 438(d) of this title), prior to amendment of section 308 of Pub. L. 92-225 by Pub. L. 93-443.

A prior section 309 of Pub. L. 92-225 was renumbered section 306, and is classified to section 437c of this title.

Another prior section 309 of Pub. L. 92-225 was renumbered section 308, and was classified to section 437b of this title, prior to repeal by Pub. L. 96-187.

Another prior section 309 of Pub. L. 92-225 was renumbered section 312, and is classified to section 439 of this title.

#### AMENDMENTS

2008—Subsec. (a)(4)(C)(iv). Pub. L. 110-433 added cl. (iv).

2002—Subsec. (a)(5)(B). Pub. L. 107-155, § 315(a)(1), inserted before period at end “(or, in the case of a violation of section 441f of this title, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of \$50,000 or 1,000 percent of the amount involved in the violation)”.

Subsec. (a)(6)(C). Pub. L. 107-155, § 315(a)(2), inserted before period at end “(or, in the case of a violation of section 441f of this title, which is not less than 300 percent of the amount involved in the violation and is not more than the greater of \$50,000 or 1,000 percent of the amount involved in the violation)”.

Subsec. (d)(1)(A). Pub. L. 107-155, § 312(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution or expenditure aggregating \$2,000 or more during a calendar year shall be fined, or imprisoned for not more than one year, or both. The amount of this fine shall not exceed the greater of \$25,000 or 300 percent of any contribution or expenditure involved in such violation.”

Subsec. (d)(1)(D). Pub. L. 107-155, § 315(b), added subpar. (D).

1999—Subsec. (a)(4)(A)(i). Pub. L. 106-58, § 640(a)(1), substituted “clauses (ii) and subparagraph (C)” for “clause (ii)”.

Subsec. (a)(4)(C). Pub. L. 106-58, § 640(a)(2), added subpar. (C).

Subsec. (a)(6)(A). Pub. L. 106-58, § 640(b), substituted “paragraph (4)” for “paragraph (4)(A)”.

1986—Subsecs. (a)(1), (2), (4)(A)(i), (B)(ii), (5)(A) to (C), (6), (d)(2), (3). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1984—Subsec. (a)(10). Pub. L. 98-620 struck out par. (10) which provided that any action brought under subsec. (a) be advanced on the docket of the court in which filed and put ahead of all other actions (other than other actions brought under this subsec. or under section 437h of this title).

1980—Pub. L. 96-187, § 108, substantially revised provisions of this section in order to facilitate the Commission's more expeditious handling of complaints, and implementation of enforcement proceedings.

1976—Subsec. (a). Pub. L. 94-283, § 109, generally revised provisions of subsec. (a) to reflect enactment of sections 441a to 441j of this title and repeal of sections 608 and 610 to 617 of title 18 and to update the operations of the Commission.

Subsecs. (b), (c). Pub. L. 94-283, § 109, reenacted subsec. (b) without change and added subsec. (c).

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-433, § 1(c), Oct. 16, 2008, 122 Stat. 4971, provided that: “The amendments made by this section [amending this section and repealing provisions set out as a note below] shall take effect as if included in the enactment of the Treasury and General Government Appropriations Act, 2000 [Pub. L. 106-58].”

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-155, title III, § 312(b), Mar. 27, 2002, 116 Stat. 106, provided that: “The amendment made by this section [amending this section] shall apply to violations occurring on or after the effective date of this Act [for general effective date of Pub. L. 107-155, see section 402 of Pub. L. 107-155, set out as an Effective Date of 2002 Amendment; Regulations note under section 431 of this title].”

Pub. L. 107-155, title III, § 315(c), Mar. 27, 2002, 116 Stat. 108, provided that: “The amendments made by this section [amending this section] shall apply with respect to violations occurring on or after the effective date of this Act [for general effective date of Pub. L. 107-155, see section 402 of Pub. L. 107-155, set out as an Effective Date of 2002 Amendment; Regulations note under section 431 of this title].”

#### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-58, title VI, § 640(c), Sept. 29, 1999, 113 Stat. 477, as amended by Pub. L. 107-67, title VI, § 642, Nov. 12, 2001, 115 Stat. 555; Pub. L. 108-199, div. F, title VI, § 639, Jan. 23, 2004, 118 Stat. 359; Pub. L. 109-115, div. A, title VII, § 721, Nov. 30, 2005, 119 Stat. 2493, which provided that the amendments made by section 640 of Pub. L. 106-58, amending this section, were applicable to violations relating to reporting periods beginning on or after Jan. 1, 2000, and ending on or before Dec. 31, 2008, was repealed by Pub. L. 110-433, § 1(b), Oct. 16, 2008, 122 Stat. 4971.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-187 effective Jan. 8, 1980, see section 301(a) of Pub. L. 96-187, set out as a note under section 431 of this title.

#### EFFECTIVE DATE

Section effective Jan. 1, 1975, see section 410(a) of Pub. L. 93-443, set out as an Effective Date of 1974 Amendment note under section 431 of this title.

### § 437h. Judicial review

The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President